

District 6, International Union of Industrial, Service, Transport and Health Employees (Maple View Manor) and Isaac Lichtenstein. Cases 34-CP-16 and 34-CC-143

November 18, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

On February 28, 1996, the Acting Regional Director for Region 34 issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing alleging that the Respondent has violated Sections 8(b)(4)(i) and (ii)(C) and 8(b)(7)(B) of the Act. The Respondent filed an answer and an amended answer admitting in part and denying in part the allegations in the consolidated complaint.

On July 11, 1996, the General Counsel filed a Motion for Summary Judgment and for Issuance of Board Decision and Order and Memorandum in Support, with exhibits attached. On July 15, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On July 29, 1996, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The complaint contends that the Respondent unlawfully picketed Maple View Manor (the Employer) for recognitional purposes within 12 months of a valid Board election in Case 34-RC-1330 that resulted in the certification of New England Health Care Employees Union, District 1199, AFL-CIO (District 1199) as the collective-bargaining representative of an appropriate unit of the Employer's employees. The complaint further alleges that the Respondent induced or encouraged individuals employed by persons engaged in commerce to refuse to perform services, and that it threatened, coerced, or restrained persons engaged in commerce, for the proscribed object of forcing or requiring the Employer to recognize or bargain with it as the representative of its employees after the certification of District 1199 as their representative. In its amended answer, the Respondent admits that it engaged in the conduct described in the consolidated complaint but contends that such conduct was not unlawful. The Respondent affirmatively contends that it was the lawful collective-bargaining representative of the Employer's employees and that the election held in Case 34-RC-1330, resulting in District 1199's certification, was invalid.

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We find that the Respondent's contention constitutes an attempt to relitigate representational issues that were litigated in Case 34-RC-1330. In particular, the Respondent seeks to relitigate postelection objections issues decided by the Board on review of the Regional Director's supplemental decision in *Maple View Manor, Inc.*, 319 NLRB 85 (1995).

Section 102.67(f) of the Board's Rules and Regulations precludes relitigating "in any related subsequent unfair labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding." The Board has stated that "[s]ubsequent unfair labor practice cases 'related' to prior representation proceedings include not only Section 8(a)(5) refusal-to-bargain cases where there is a test of certification, but also, in appropriate circumstances, unfair labor practice cases that arise under other sections of the Act." *Hafadai Beach Hotel*, 321 NLRB 116 (1996).

All issues raised by the Respondent were or could have been litigated in the prior representation proceeding. Furthermore, the Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue that is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Maple View Manor (the Employer), a corporation with an office and place of business in Rocky Hill, Connecticut, is a health care institution engaged in the operation of a nursing home providing inpatient medical and professional care services for the elderly and infirm. Tri-State Surgical Supply and Equipment Ltd. (Tri-State), a New York State corporation with an office and place of business in Brooklyn, New York, has been engaged in the shipping and distribution of surgical supplies.

During the 12-month period ending December 31, 1995, the Employer derived gross revenues in excess of \$100,000, and it purchased and received at its facility goods valued in excess of \$5000 directly from points outside the State of Connecticut. During the same time period, Tri-State shipped goods valued in excess of \$50,000 to points outside the State of New York.

We find that the Employer and Tri-State are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

The Respondent admits and we find that it is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

In an election held in Case 34-RC-1330 on June 2, 1995, among a unit of the Employer's full-time and regular part-time service and maintenance employees, a majority of the valid votes were cast for District 1199. On June 22, District 1199 was certified as the exclusive collective-bargaining representative of the Employer's employees in an appropriate unit. In late November, the Respondent demanded that the Employer recognize and bargain with the Respondent as the exclusive collective-bargaining representative of the unit employees. On November 28, the Respondent picketed the Employer's facility in order to force or require the Employer to recognize or bargain with it as the representative of the unit employees and to force or require those employees to accept or select the Respondent as their collective-bargaining representative. Such picketing, conducted within 12 months of a valid Board election, violated Section 8(b)(7)(B) of the Act.

By the same conduct, the Respondent induced or encouraged individuals employed by Tri-State, and other persons engaged in commerce, to refuse to perform services, and it has threatened, coerced, and restrained Tri-State, and other persons engaged in commerce. Such conduct, which had an object of forcing or requiring the Employer to recognize it as the unit employees' representative at a time when District 1199 had been certified as their exclusive collective-bargaining representative under the provisions of Section 9 of the Act, violated Section 8(b)(4)(i) and (ii)(C) of the Act.

CONCLUSIONS OF LAW

1. By picketing the Employer with an object of forcing or requiring it to recognize and bargain with the Respondent, or forcing or requiring the employees of the Employer to accept or select the Respondent as their bargaining representative within 12 months of a valid election under Section 9(c) of the Act, and at a time when the Respondent was not certified as the bargaining representative of the Employer's employees, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(7)(B) of the Act.

2. By inducing and encouraging employees of Tri-State and other persons engaged in commerce to refuse to perform services, and by threatening, coercing, and restraining Tri-State and other persons engaged in commerce, with an object of forcing or requiring the Employer to recognize and bargain with the Respondent as the collective-bargaining representative of the Employer's employees, notwithstanding the certifi-

cation pursuant to Section 9 of the Act of another labor organization as the representative of those employees, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(C) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices in violation of Sections 8(b)(4)(i) and (ii)(C) and 8(b)(7)(B) of the Act, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, District 6, International Union of Industrial, Service, Transport and Health Employees, New York, New York, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Picketing Maple View Manor, the Employer, within 12 months of a valid election conducted under Section 9(c) of the Act, for the object of forcing or requiring the Employer to recognize or bargain with the Respondent as representative of the Employer's employees, or forcing or requiring those employees to accept the Respondent as their representative, unless the Respondent is currently certified to represent them.

(b) Inducing or encouraging employees of Tri-State Surgical Supply and Equipment Ltd., or any other persons engaged in commerce, to refuse to perform services, or threatening, coercing, and restraining Tri-State or any other persons engaged in commerce, where an object thereof is to force or require the Employer to recognize and bargain with the Respondent as the collective-bargaining representative of the Employer's employees, if and so long as another labor organization is certified as the representative of such employees under the provisions of Section 9 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its offices copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Re-

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

spondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Within 14 days after service by the Region, sign and return to the Regional Director sufficient copies of the notice for posting by the Employer, if willing, at all places where notices to employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT picket Maple View Manor, within 12 months of a valid election conducted under Section 9(c) of the Act, for the object of forcing or requiring that Employer to recognize or bargain with us as the representative of the employees of Maple View Manor, or forcing or requiring those employees to accept us as their representative, unless we are certified by the Board to represent them.

WE WILL NOT induce or encourage employees of Tri-State Surgical Supply and Equipment Ltd., or any other persons engaged in commerce, to refuse to perform services, or threaten, coerce, and restrain Tri-State or any other persons engaged in commerce, where an object thereof is to force or require Maple View Manor to recognize and bargain with us as the collective-bargaining representative of Maple View Manor's employees, if and so long as another labor organization is certified as the representative of such employees under the provisions of Section 9 of the Act.

DISTRICT 6, INTERNATIONAL UNION OF
INDUSTRIAL, SERVICE, TRANSPORT AND
HEALTH EMPLOYEES